



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

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DECISION OF THE BOARD

Mailed and Filed: MAY 19, 2023

IN THE MATTER OF:

Appeal Board No. 628497

PRESENT: JUNE F. O'NEILL, MEMBER

The Department of Labor issued the initial determination holding the claimant ineligible to receive benefits, effective March 9, 2020, on the basis that the claimant did not comply with registration requirements, denying the claimant's request to backdate her claim for Pandemic Unemployment Assistance (PUA) benefits, effective March 9, 2020. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded an opportunity to be heard and at which testimony was taken. There were appearances by the claimant and on behalf of the Commissioner of Labor. By decision filed August 31, 2022 (A.L.J. Case No. 022-20902), the Administrative Law Judge sustained the initial determination. The claimant appealed the Judge's decision to the Board.

By decision filed December 22, 2022 (Appeal Board No. 625540), the Board rescinded the decision of the Administrative Law Judge filed August 31, 2022, and remanded the case to the Hearing Section for a further hearing and a decision on the remanded issue. The Administrative Law Judge held telephone conference hearings at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances on behalf of the claimant and the Commissioner of Labor. By decision filed March 2, 2023 (), the Administrative Law Judge sustained the initial determination.

The claimant appealed the Judge's decision to the Board. The Board considered the arguments contained in the written statement submitted on behalf of the claimant.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: Prior to March 2020, the claimant was self-employed, working as an independent contractor, selling Medicare products to senior citizens. She worked face to face with her clients, often meeting them in their homes or in assisted living facilities. As a result of the COVID-19 pandemic, the claimant was not able to meet with her clients, a vulnerable population; in early March 2020, the industry shut down and the claimant became unemployed.

The claimant began to call the Department of Labor ("the Department") to ask whether she could receive pandemic assistance, and go online to try to file a claim, but was unable to reach anyone; her calls kept being dropped and she kept getting "kicked off" the website. The claimant continued to call to ask about her eligibility, including multiple calls made to the Department on April 17, 2020.

The claimant spoke to a DOL representative by phone on or about April 17, 2020. The claimant explained that she was self-employed, and had 1099 wages, and asked whether she would qualify for Pandemic Unemployment Assistance. The representative with whom the claimant spoke told the claimant she would only qualify if she had earnings of at least \$1,600 in each quarter when she was working. The claimant said she did not have that much in earnings, and the representative told her that she did not qualify. Based upon this information, the claimant did not file a claim for unemployment insurance (UI) benefits or Pandemic Unemployment Assistance (PUA) benefits at that time. The claimant was not asked to provide her social security number or birthdate during this call.

In February 2021, the claimant learned that a colleague, who had been in the same business as the claimant with similar earnings, was receiving PUA benefits. Upon learning this, the claimant filed a claim for unemployment benefits on February 10, 2021. She also applied for PUA, and was found eligible to receive PUA retroactive to November 30, 2020. The claimant's financial circumstances with respect to her past earnings were the same in February 2021 as they were in March and April 2020.

The Department searched its records for calls from the claimant, using the claimant's telephone number and social security number. A call history report produced by the Commissioner of Labor ("the Commissioner") for February 26,

2020 through May 26, 2020, shows four calls made from the claimant's cell phone to the Department's "original claims" number on April 17, 2020. The report indicates that the calls were received at 5:59 A.M., 6:00 A.M., 7:20 A.M., and 7:59 A.M., that the claimant's social security number was "not gathered," and that "VCC-TCC" was closed at the time of the calls. The report reflects no other calls made from the claimant's phone number for the period searched. The claimant's phone records, produced at the remand hearing, show those four before-hour calls, and three additional calls made from the claimant's phone to the same Department phone number after the TCC was open and accepting calls. These additional calls were made at 8:00 A.M., 8:02 A.M., and 8:07 A.M., and each call lasted about 2 minutes.

OPINION: The credible evidence establishes that the claimant contacted the Department of Labor on or about April 17, 2020 to inquire about her eligibility for PUA benefits, and was advised by a Department representative that if she did not have earnings of at least \$1,600 in each quarter, she did not qualify to receive those benefits. The information provided to the claimant was not accurate. As a result of this misinformation, the claimant did not pursue the filing of a claim for benefits at that time, or at any time prior to February 2021.

We are convinced by the claimant's consistent and credible testimony that she called the Department to inquire into her eligibility for PUA benefits, and was given misinformation about the eligibility requirements. We credit the claimant's testimony regarding these calls over that of the Commissioner's hearing representative who asserted that there were no calls from the claimant during which she could have been told she did not qualify. This witness based his testimony on the results of the Department's record search that discovered

only four calls made by the claimant to the Department, all on April 17, 2020, and all prior to the business hours for the call center. However, the claimant's telephone records, the accuracy of which was not contested by the Commissioner's representative, reveal additional calls made by the claimant to the same call center number; these additional calls were not reflected on the Department's records. The absence of any Department record of these calls weakens the accuracy of the Department's records, and weakens the persuasiveness of the testimony stemming from those records. By contrast, the claimant's credible testimony is consistent and convincing, and is supported by her telephone records.

Thus, we give greater weight to, and are persuaded by, the claimant's firsthand, consistent, and credible testimony regarding the fact and contents of her call with a Department representative. We also note the hearing representative's acknowledgement that he "really does not know" what happened when the claimant called the Department on April 17, 2020.

Further, we find that the claimant's receipt of misinformation from a Department representative supports a decision to backdate her claim for benefits. In general, misinformation from a Department of Labor representative constitutes good cause to excuse a claimant's failure to file a claim for benefits sooner, and warrants the backdating of a claim. Under the circumstances here, the provisions of the CARES Act do not prohibit a granting of the claimant's request because she did not file a claim until after December 27, 2020. Unemployment Insurance Program Letter (UIPL) Nos. 16-20, Changes 1 and 4, and the attached guidelines for processing PUA claims, provide that a PUA claim may be backdated to the date of an original unemployment insurance claim if the claimant would have been eligible for PUA at the time of the original claim. We find that if a claimant's application for regular benefits can be backdated on the basis that she received misinformation from a Department representative, it follows that a subsequent PUA claim may similarly be backdated. See, e.g., Appeal Board No. 625781, which granted the Commissioner's application to withdraw her appeal, and continued in effect the decision rejecting the Commissioner's contention that a claim could not be backdated to prior to November 30, 2020, citing to UIPL No. 16-20, Change 4, Attachment I.

Thus, we find that credible and consistent evidence establishes that the claimant received misinformation from a Department of Labor representative, and that in reliance upon that misinformation, she did not file a claim for UI/PUA benefits in early 2020. Since the CARES Act does not preclude claim backdating under these circumstances, we conclude that the claimant's failure to register effective March 9, 2020 is excused, and that the claimant's request to have her claim backdated shall be granted.

DECISION: The decision of the Administrative Law Judge is reversed.

The initial determination, holding the claimant ineligible to receive benefits, effective March 9, 2020, on the basis that the claimant did not comply with registration requirements, denying the claimant's request to backdate her claim for PUA benefits, effective March 9, 2020, is overruled.

The claimant is allowed benefits with respect to the issues decided herein.

JUNE F. O'NEILL, MEMBER